

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GILEAD SCIENCES, INC. and
EMORY UNIVERSITY,

Plaintiffs,

v.

TEVA PHARMACEUTICALS USA, INC. and
TEVA PHARMACEUTICAL INDUSTRIES LTD.,

Defendants.

Case No. 08-CV-10838 (RJS)

STIPULATION OF DISMISSAL

WHEREAS, defendant Teva Pharmaceuticals USA, Inc. is the owner of Abbreviated New Drug Application Nos. 90-894 and 91-215 (the "ANDAs") and is a wholly-owned subsidiary of defendant Teva Pharmaceutical Industries, Ltd. (collectively "Teva");

WHEREAS, plaintiff Emory University is the owner of U.S. Patent No. 5,814,639 (the "'639 patent');

WHEREAS, plaintiff Gilead Sciences, Inc. ("Gilead") is a licensee under the '639 patent;

WHEREAS, the ANDAs included or were amended to include certifications under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) ("Paragraph IV certifications") that several patents owned by or licensed to Gilead, including the '639 patent, are invalid or would not be infringed by Teva's commercial marketing of the products that are the subjects of the ANDAs;

WHEREAS, based on the filing of the ANDAs containing the Paragraph IV certifications, plaintiffs brought actions, including this action, under 35 U.S.C. § 271(e)(2) against Teva for patent infringement;

WHEREAS, the patents contested in this action include the '639 patent;

WHEREAS, Teva has amended the ANDAs to remove the Paragraph IV certifications against the '639 patent, and has substituted therefor certifications under 21 U.S.C. § 355(j)(2)(A)(vii)(III) ("Paragraph III certifications");

WHEREAS, because the ANDAs now include Paragraph III certifications for the '639 patent, the United States Food and Drug Administration will not approve the ANDAs at least until the expiration of that patent (21 U.S.C. § 355(j)(5)(B)(ii));

THEREFORE, the parties stipulate and agree as follows:

1. Counts 5 and 6 of plaintiffs' Fourth Amended Complaint for Patent Infringement are dismissed with prejudice;
2. Teva, on behalf of itself and its successors and assigns, agrees that it will not challenge the patentability, validity, enforceability, or infringement of the '639 patent unless that patent is declared invalid or unenforceable in another proceeding in which Teva is not a party;
3. Teva, on behalf of itself and its successors and assigns, agrees that it will not assist any person, including any other generic pharmaceutical company, in challenging the patentability, validity or enforceability of the '639 patent;
4. This stipulation may be disclosed to the Federal Trade Commission and the United States Department of Justice pursuant to section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

5. Each party will bear its own costs and attorneys' fees.

FITZPATRICK, CELLA, HARPER
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January 23, 2014

SO ORDERED:

This 29th day of January, 2014

Hon. Richard J. Sullivan, United States District Judge